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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/549,451	04/14/2000	Charles Bluth	M-8231 US	8923

24251 7590 05/21/2002

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EXAMINER

ASTORINO, MICHAEL C

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 05/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/549,451

Applicant(s)

Bluth et al.

Examiner

Michael C. Astorino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The examiner acknowledges the amendment filed 1/14/2002 wherein claims 1, 3, 5-7, 14, 20, 24-26, and 28-30 have been amended. Furthermore the examiner recognizes the supplemental amendment filed 3/22/2002 wherein claims 36-37 were added.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Ballantyne et al. ('821).

Ballantyne et al. discloses a controller with a display (6, 8, 10), local storage coupled to the controller (column 4, lines 4-15), a health test interface (column 1-2, lines 65-62) and communications interface (figure 1), a measurement interface (column 10), a smart card (columns 10-11, lines 58-11), a kiosk (216), a remote server (column 2, lines 5-12), a medical library (2), and electronic-commerce for purchase capabilities (column 2).

Response to Arguments

4. Applicant's arguments filed 1/14/2002 have been fully considered but they are not persuasive. The applicant argues that the Ballantyne et al. reference does not include "logic for controlling acquisition of data and logic for processing the health management data, but merely

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“interfaces with specific external health monitoring equipment to register and track” patient characteristics. It is the examiner’s position that the term logic refers to a list of instructions that tells a program or circuits in a piece of hardware how to operate. It is the examiner’s position that the broad nature of the term logic makes it possible for the examiner to state that the Ballentyne et al. reference meets the limitations of the claimed invention by maintaining a preliminary diagnosis system as disclosed in column 17, lines 24-36. Furthermore, by having a PC at the kiosk the Ballentyne et al. reference has a controller and moreover although the diagnosis means of Ballentyne et al. is disclosed as “preliminary”, the disclosure still meets the limitations “health care test” of the claim by having the capability to appraise a health risk. As for the e-commerce limitations of the newly presented claims of 36-37, the examiner points to column 17, lines 37-45, wherein standard EDI billing is used for medical merchandise.


Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C Astorino whose telephone number is 703-306-9067.

The examiner can normally be reached on Monday-Friday, 9:00AM to 5:00PM.



MA


KEVIN SHAVER
5/16/02
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May 16, 2002